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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BROOKFIELD ASSET MANAGEMENT,
INC.,

Plaintiff,

V.

09 CV 8285 (FM)

AIG FINANCIAL PRODUCTS CORP.,

Defendant.

New York, N.Y.
April 20, 2011
10:15 a.m.

Before:

HON. FRANK MAAS,

Magistrate Judge

APPEARANCES

JENNER & BLOCK, LLP
Attorneys for Plaintiff
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1 (In open court)

2 THE DEPUTY CLERK: Conference in the matter of
3 Brookfield Asset Management v. AIG Financial Products.
4 Counsel, state your name for the record, please.

5 MR. ASCHER: Stephen Ascher from Jenner & Block. I'm
6 here with my colleagues, Luke McLoughlin and Eric Brown, for
7 the plaintiff Brookfield.

8 THE COURT: Good morning.

9 MR. ASCHER: Good morning, your Honor.

10 MR. PICKHARDT: Good morning, your Honor. John
11 Pickhardt from Quinn Emanuel on behalf of AIG. I'm joined at
12 counsel table by Jake Shields.

13 THE COURT: We have Mr. Ziegler hiding in the back.

14 MR. ZIEGLER: I'm only going to speak if I can't help
15 myself.

16 THE COURT: Well, then I'll enjoy hearing from you.

17 I received the April 13 letter from Mr. Ascher and --
18 or his April 18 letter, and I'm mindful of the fact that the
19 document discovery deadline, as I understand it, is August 31,
20 is that correct?

21 MR. ASCHER: That's right, your Honor.

22 THE COURT: With respect to the pace of production, I
23 have two observations: One, it does seem somewhat slow. Two,
24 I think it's probably not helped by interim requests to
25 prioritize certain documents which it seems to me probably

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1 slows down, if not confuses, the process.

2 MR. ASCHER: Your Honor, many of the prioritizations,
3 if not all of them, are because we are trying to get a sense of
4 what -- trying to get information about certain topics so we
5 can figure out how much more we need. So we are not
6 prioritizing simply because we want to conduct some internal
7 analysis for our own purpose. The prioritization is in order
8 to limit and give some sense to the document production. So I
9 think it has been productive to do that.

10 Beyond that, your Honor, while I'm standing, we think
11 it's slow too, obviously, and while AIG's letter lists a
12 seemingly impressive array of documents that have been
13 produced, seven of those categories are very discrete items
14 that are routinely produced in litigation by AIG, probably
15 several times a year at least: Organizational charts and that
16 sort of thing, accounting policies, document retention
17 policies, some universe of documents that they've already
18 produced in other litigations or to regulatory agencies. Then
19 the remainder of the things that they've produced are, while
20 voluminous in pages, not sets of documents that would require a
21 burdensome page-by-page review either for privilege or
22 responsiveness. These are reports or other financial
23 information that are collected in a single place. While we
24 recognize that there is some process that they need to go
25 through to collect those documents, it's just not comparable to

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1 the type of information that really requires the three and a
2 half months that they've taken so far.

3 MR. PICKHARDT: Good morning, your Honor. Your Honor,
4 we disagree, as you might expect, with regard to whether the
5 pace of production here has been too slow. As your Honor may
6 recall at our last conference, we were discussing a letter that
7 Jenner had prepared identifying certain categories of documents
8 that they asked us to focus on, and your Honor identified a
9 number of categories of documents on that list that seemed like
10 ones that could be gotten in relatively short order and asked
11 that we focus on those categories.

12 Notwithstanding that there was a small number of
13 categories, since our last conference we have produced
14 documents in response to all but one of the bullet points that
15 had been identified in Jenner's letter. In addition, we have
16 produced -- you know, the volume is substantial and
17 notwithstanding, you know, what Mr. Ascher says, it does
18 reflect a significant amount of effort. We have produced over
19 a half million pages. We have another three million pages that
20 are all set to go. We have it all ready to go out the door,
21 and the only thing we are waiting on is our satisfaction of
22 certain notice requirements under confidential agreements in
23 order to allow us to produce the documents.

24 THE COURT: All of the 3 million pages hinge on that?

25 MR. PICKHARDT: Yes, your Honor. These include, as

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1 you recall, Brookfield asked about data rooms, and we have
2 gathered data rooms and the only issue with those is that we do
3 have certain confidentiality agreements with third parties
4 covering the substance of those data rooms.

5 THE COURT: This is not European privacy issues; this
6 is contractual privacy issues?

7 MR. PICKHARDT: That's right. So we have produced
8 notice to the third parties and indicated that we intend to
9 produce these documents by a date certain, you know, unless
10 they come in and raise some issue which they would have to, I
11 think, present to your Honor, we are going to go ahead and
12 produce those documents on the date certain that we identified
13 to the third parties.

14 THE COURT: What's the date certain?

15 MR. PICKHARDT: It's within the next ten days. We had
16 to send out, I think, eight of these different letters.
17 There's different dates depending on the particular letter, but
18 certainly within ten days to two weeks there is going to be
19 another 3 million pages.

20 So, your Honor, we certainly respect that there may be
21 honest disagreements with respect to AIG's efforts and we're
22 happy to address those, but it is difficult for us to fathom
23 that there's an honest disagreement here when Brookfield
24 identifies a list of documents, we have a conference with
25 respect to those documents. In the wake of that, you know, we

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1 have either produced or will produce over 3 and a half million
2 pages of documents that cover all but one of the categories,
3 you know, that were identified. We also --

4 THE COURT: The category that isn't covered is what?

5 MR. PICKHARDT: It concerns there's one bullet point
6 that concerns third-party bank credit facilities. We are in
7 the process of gathering documents sufficient to identify
8 third-party bank credit facilities, but we just don't have
9 those documents yet.

10 We also have been working, contrary to what Mr. Ascher
11 said, to assist in providing samples of documents or reports
12 where we have indicated we think those reports would be
13 sufficient to provide them, you know, with discovery that they
14 want and provide them samples so that we can try and front any
15 disagreements as early as possible. But I think a lot of the
16 categories of documents that they are asking us to prioritize,
17 for example, all of these documents regarding collateral calls
18 has nothing to do with whether that's going to speed up, you
19 know, the pace of discovery. It's just them saying, this is
20 what we want first.

21 And so we do agree -- (A) we think we have been
22 undertaking this at a diligent and adequate pace, and we think
23 we should be given the leeway, given the short time period we
24 have to complete document discovery, for us to undertake these
25 efforts in the manner in which we think will be most efficient

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1 subject to our continued demonstration that we are making
2 progress, and we think we have made that demonstration and we
3 expect to continue to do so.

4 THE COURT: Well, the reality is that I can't
5 micromanage the process. Certain documents were requested on a
6 priority basis. I guess what I'm saying is I don't want to see
7 continual requests or rolling requests to prioritize certain
8 documents because I think it probably screws up the process
9 except to the extent that it's something like a request for a
10 sample of a certain type of report to determine whether other
11 requests can be narrowed.

12 MR. ASCHER: We appreciate that, your Honor, and we
13 are trying to keep that to a minimum. We have one exception
14 that we will get to in a minute for separate reasons, but just
15 to put a final word on that, Mr. Pickhardt is correct that AIG
16 has produced the things that we prioritized in our last
17 conference, but you will recall those are the things that we
18 identified in the course of several meet and confers as what we
19 consider to be the easiest things for AIG to produce. So the
20 fact that it took AIG three and a half months to get us the
21 things that are the easiest doesn't give us a lot of comfort
22 that they are going to be able to get us the harder things in
23 the remaining four and a half months.

24 THE COURT: Well, easy or hard, August 31, as far as
25 I'm concerned, is a drop-dead date. So regardless of how much

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1 effort or how many contract attorneys it may take, I expect all
2 of the requests to be responded to fully except to the extent
3 that I've indicated that they need not be by August 31.

4 With that in mind, why don't we then turn to the
5 specific issues raised in Brookfield's letter, which I guess
6 starts with the moratorium on collateral call payments. These
7 are at request 45.

8 MR. ASCHER: Yes, your Honor. That is I think the one
9 exception where we have prioritized documents for a reason
10 other than because we think it will allow us to determine what
11 other documents we need. We have prioritized that universe of
12 documents, frankly, because AIG has selectively collected and
13 provided a subset of those documents to us in an effort to
14 persuade us to withdraw a key allegation in the amended
15 complaint, which is that AIGFP instituted a collateral --
16 excuse me -- a moratorium on the payment of collateral calls on
17 a certain class of transactions, CDS on CDOs on September 16,
18 which you will recall is the type of incident that Judge
19 Gardephe stated could be evidence of an inability -- a present
20 inability to pay one's debts when due.

21 THE COURT: Mr. Pickhardt's letter said, well, we only
22 did it a little, but for your purposes probably a little is
23 enough if it's in the critical time period.

24 MR. ASCHER: Well, we would certainly favor that
25 reading, your Honor. And beyond that, we don't agree it was a

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1 little. While it was on a specific category of transactions,
2 this is the category of transactions that more than any other
3 transaction type was responsible for AIG's demise, and --

4 THE COURT: But on your theory of the case -- I mean,
5 Mr. Pickhardt's letter said, well, based on the documents that
6 we've given them -- and I'm paraphrasing -- they now realize
7 there's a moratorium only as to one transaction type, CDS on
8 CDOs, and as to only part of the day on September 16 until the
9 government committed to the bailout.

10 Assuming all of that is correct, I assume you'd say
11 Brookfield still wins, right?

12 MR. ASCHER: Yes, your Honor, absolutely, for two
13 reasons: First of all, as I just mentioned, the fact that it's
14 one category of transactions, the vast majority of the
15 collateral calls were on that category of transactions. The
16 foreign exchange transactions, the repo transactions, these are
17 yielding collateral calls of a million dollars, two million
18 dollars. On the CDS of CDOs, you have collateral calls in the
19 hundreds of millions of dollars, and frequently tens of
20 millions of dollars getting called on that day. So we don't
21 see that as having any substance at all, your Honor.

22 The second point is that the moratorium seems not to
23 have gone beyond the afternoon of September 16, and the only
24 reason for that is, well, if it had, AIG would have gone
25 bankrupt. The government stepped in. They stepped in at the

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1 last possible moment, but if they hadn't stepped in then, they
2 would have gone bankrupt. So it's necessarily true that the
3 moratorium didn't last beyond that day or else we'd have a very
4 different situation.

5 But one of the key points that we've alleged, and
6 which we think we'll be able to prove very easily is that this
7 agreement was designed to permit early termination because of
8 an event of default even before a bankruptcy occurs, otherwise,
9 the only event of default would be bankruptcy.

10 THE COURT: Say that again.

11 MR. ASCHER: The swap agreement between the parties
12 includes a provision concerning events of default, and one of
13 the events of default is bankruptcy.

14 THE COURT: Right.

15 MR. ASCHER: But there are a lot of other events of
16 default like insolvency and winding up, acts in furtherance of
17 bankruptcy, and so it's obvious that something short of
18 bankruptcy must be able to trigger an event of default or else
19 the only event of default listed in the agreement would be
20 bankruptcy itself.

21 So that's why we think this allegation will prove to
22 be a very powerful one, your Honor, and we think we're entitled
23 to full discovery on it.

24 Somewhat surprisingly to us, AIG took it upon
25 themselves to send us a letter saying you're wrong, there was

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1 no moratorium. And what they did was they collected a set of
2 65 emails that purported to show that AIGFP agreed to certain
3 collateral calls over the course of September 16, and that the
4 ordinary collateral call posting process was ongoing on that
5 day.

6 Well, in fact, if you take those 65 emails and put
7 them in chronological order from the beginning of September 16
8 to the end of September 16, you see just the opposite. The
9 only collateral calls that AIG agreed to pay before the 4:00
10 bailout from the government are collateral calls on repo
11 transactions and an interest rate swap and one single CDS of
12 CDO where the collateral call had actually received the
13 previous day and a failure to pay it that day would have been
14 clearly a failure to pay and not just evidence of an inability
15 to pay. All of the other collateral calls on CDS of CDOs got
16 deferred until after -- until the very end of the day, and by
17 that time we know from public sources, and we think from
18 documents, the government had said to AIG, OK, we're giving you
19 \$85 billion.

20 So that's a very important allegation. AIG has given
21 us this misleading, we think, subset of documents, and all we
22 have asked for, your Honor, is as long as we are, frankly,
23 under threat of Rule 11 in their letters, explicit invocation
24 of Rule 11 being put to test our allegations, we want
25 sufficient information in order to understand what really

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1 happened with respect to the collateral calls on
2 September 15th, 16th and 17th. And we've asked for complete
3 information concerning what collateral calls were received,
4 what were made, what were disputed, what happened with the key
5 email. It's an email from someone named Tom Athan at AIGFP who
6 says, let's hold all the collateral calls till the end of the
7 day. Let's dispute them. We're just disputing everything. We
8 haven't made a determination whether we can dispute it, but
9 that's the position we're going to take. And we want complete
10 information about what happened during that period because we
11 think it's crucial to allow us to evaluate their claim that we
12 are in violation of Rule 11. So that is the one category of
13 information that we are prioritizing.

14 Now, for the first time in AIG's letter on Monday,
15 they appear to back away from the objection that they made in
16 their response to our document request. You will recall
17 originally AIG said, well, if it wasn't a board ordered
18 moratorium, it doesn't count because it's not a quote
19 "corporate action." And that we think is contrary to Judge
20 Gardephe's holdings. We think they are essentially helping
21 themselves to a stay of discovery.

22 As we read Monday's letter from Quinn Emanuel, we
23 believe that they are essentially abandoning that as an
24 objection to the document request. We see no defense of that
25 in their letter. I'd like to clarify that on the record today.

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1 And then beyond that, AIG does say that they will
2 produce some documents from this one email address,
3 AIGFPcollateral@AIGFP.com, something like that, which
4 apparently was used to receive collateral calls and to
5 communicate AIG's decision whether to dispute or pay in part or
6 pay in whole the collateral call.

7 And that's a nice start, your Honor, but there's still
8 a lot of ambiguity about what exactly AIG is going to produce
9 and whether it will be complete information. The ambiguities
10 are, first of all, what exactly will be produced from that
11 email address. There is a suggestion in meet and confers that
12 we've had with Quinn Emanuel that they will only produce emails
13 that represent a formal instruction or agreement to pay or
14 dispute the collateral calls.

15 Now, we think there is no -- I'm not quite sure I know
16 what that means, but we think we're entitled to everything out
17 of that email address, and, frankly, we think it will be less
18 burdensome for them just to give us everything from that email
19 address. It's all extremely likely to be responsive, and it's
20 extremely unlikely to be privileged.

21 THE COURT: You're seeking this for what period of
22 time for that day? For --

23 MR. ASCHER: We've asked for September 15th, 16th and
24 17th in the course of back and forth with Quinn Emanuel,
25 although, frankly, it would be helpful to have the full

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1 eight-day period, September 10 to 17, which was an eight-day
2 period that we had used previously.

3 So that's one issue. AIG is claiming burden, but it
4 seems to me it's something that's probably very easily
5 collected given that it's in a single email box.

6 The next ambiguity, your Honor, we don't have a clear
7 commitment from AIG to search any other custodians for this
8 information. We recognize that we've gotten other information
9 on this question because some relevant custodians were included
10 in our original list of 19. That was a list of course that
11 came from us, not from AIG. We'll get more information from
12 the 18 additional custodians that we've identified, but -- and
13 this will be a recurring theme today, your Honor. We think AIG
14 has an obligation to tell us if there are any other custodians
15 that they think they have an obligation to search.

16 AIGFP apparently had a group of people who, as part or
17 perhaps all of their job, were dealing with collateral calls
18 and responding to them, calculating what they needed to pay and
19 ordering payments. And so there may be a group of people whose
20 emails needs to be searched in addition to this collateral call
21 email address itself.

22 AIG also hasn't committed to search for documents
23 specifically concerning that key Athan email that I mentioned.

24 THE COURT: What's the name of that individual?

25 MR. ASCHER: Tom -- I'm not sure if it's Athan or

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1 Athan. A-T-H-A-N.

2 THE COURT: A-T-H-A-N?

3 MR. ASCHER: A-N. He was a managing director at AIGFP
4 who was responsible for credit trading and seems to have been
5 not normally involved in the collateral call process, but I
6 think it's evidence of what an extraordinary act it was to
7 decide to dispute all the collateral calls; that that came from
8 him on September 16.

9 Then the final issue, your Honor, which is what we
10 started this conversation about, is whether this will be
11 produced in the ordinary course at some point between now and
12 August 31, or, given the selective production and the Rule 11
13 invocation by AIG, whether this information will be prioritized
14 and produced shortly.

15 MR. PICKHARDT: Your Honor, Brookfield's position on
16 this has shifted significantly. When they filed their amended
17 complaint, they included allegations in their complaint that
18 there had been a blanket instruction at AIGFP to dispute all
19 collateral calls. They also described it as an
20 across-the-board moratorium on the payment of collateral calls.
21 When FP saw that and saw the scanty document that they were
22 relying upon, which was a single email from Mr. Athan, they
23 said that never happened, and we know it never happened because
24 AIG was agreeing to the payment of collateral calls across the
25 day.

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1 And the documents that we have provided to Brookfield
2 demonstrate that in advance of this afternoon email from
3 Mr. Athan when there was purportedly this across-the-board
4 moratorium and this blanket instruction in place, AIGFP had
5 already agreed to post over \$400 million in collateral to
6 counterparties. Within one hour of Mr. Athan sending the
7 email, AIG had agreed to post another \$300 million.

8 Now, what Brookfield now comes in and says, it says,
9 well, wait a minute, that's because, you know, our allegations
10 relate only to a particular subset of transactions: CDS on
11 CDOs. And we're only talking about part of the day; we're not
12 talking about the whole day.

13 And they certainly can say that now. It's not what
14 their amended complaint says. It's not what the briefing says
15 on the motion to dismiss. They talk about blanket instructions
16 and across-the-board moratoriums. And the documents that they
17 already --

18 THE COURT: And you've given them documents which
19 suggest that's not the case, and what they're trying to
20 determine is whether they have a selective sample or whether
21 you're correct.

22 MR. PICKHARDT: Well, your Honor, all we are saying is
23 that if they are going to claim that there was an
24 across-the-board moratorium or a blanket instruction, and we
25 say, look, here are documents that demonstrate there was

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1 agreement to pay collateral calls both before this email, there
2 was agreement to post collateral both after this. There are no
3 other documents that are going to put in context, you know,
4 those emails to suggest that in fact this actually had been in
5 place and there was either an across-the-board moratorium or a
6 blanket instruction.

7 MR. ASCHER: Your Honor, I hate to interrupt, but
8 since Mr. Pickhardt is repeatedly misquoting the amended
9 complaint, it may be helpful to your Honor if I were to hand up
10 the relevant paragraph of the complaint, which says explicitly
11 that the moratorium related to credit default swaps on tranches
12 of collateralized debt obligations. It says that right in
13 paragraph 44.

14 And then there is a second reference to the moratorium
15 allegation in paragraph 68 of the amended complaint, and I'll
16 concede that paragraph 68 doesn't explicitly reiterate that the
17 moratorium applied only to credit default swaps on tranches of
18 collateralized debt obligations, but it does explicitly refer
19 the reader to paragraph 48. So Mr. Pickhardt is really
20 misstating facts here in this argument, your Honor.

21 MR. PICKHARDT: Your Honor, both paragraphs 44 and 68
22 of the complaint refer to an across-the-board moratorium, and
23 when they talk about disputes, they talk about disputes on
24 collateral calls.

25 THE COURT: Hand up the amended complaint, please.

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1 (Pause)

2 THE COURT: It seems to me paragraph 68 is probably
3 broader than what the facts may show, but paragraph 44 it
4 sounds like is consistent with what the documents you gave them
5 show.

6 MR. PICKHARDT: We don't think so, your Honor. The
7 last sentence of paragraph 44 is indicating what that email
8 represented which, according to Brookfield, was a blanket
9 instruction to dispute all collateral calls.

10 THE COURT: OK.

11 MR. PICKHARDT: If that's the inference that they are
12 contending can reasonably be drawn from that email, we have
13 produced documents to show whether you look both before that
14 email or after that email, in the immediate wake of that email
15 there were very significant collateral calls being agreed to by
16 AIG.

17 THE COURT: But if they delete the blanket, that
18 eliminates your objection but still is consistent with their
19 theory of that particular default.

20 MR. PICKHARDT: Well, your Honor, we don't think
21 ultimately it will be consistent. If AIG was in a position
22 where if they agreed to collateral calls -- or that they were
23 in a position where they could not agree to collateral calls,
24 and that's why they were instituting this moratorium, then why
25 would it conceivably make sense that FP would say, well, we're

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1 going to agree to hundreds of millions of dollars of collateral
2 calls with respect to this category, but we're going to, you
3 know, put off collateral calls on this other category because
4 they can't pay. So --

5 THE COURT: Because if I'm running, you know, a
6 mom-and-pop store, and I have 30 creditors screaming at me
7 because I'm not paying, it might make sense for me to take my
8 limited resources and pay the 29 smaller creditors and stiff
9 the big one, so I only have one angry person rather than
10 distributing the money allocably or paying the big creditor and
11 having the remainder of the people calling me constantly.

12 I'm not saying that that's what occurred, but that is
13 certainly a plausible interpretation of what the motivation
14 might have been, and it seems to me that as to this particular
15 issue, it should be a fairly narrow universe of documents.

16 So I am inclined to agree with Mr. Ascher that,
17 particularly since AIG seems through its Rule 11 letter to
18 attach great importance to this issue, that it ought to be
19 prioritized so that Brookfield can make a determination as to
20 whether it needs to further amend its complaint.

21 MR. PICKHARDT: Well, your Honor, two points there.
22 With respect to whether AIG is intending to produce these
23 documents, I don't think there is any disagreement. We have
24 already told Brookfield we are in the process of gathering the
25 contents of this collateral call email box. We do believe that

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1 that is where any communications with respect to collateral
2 calls would be contained. We are intending to produce out of
3 that email box any communications that they had with third
4 parties regarding collateral calls so they'll be able to see
5 whether there's disputes with third parties concerning
6 collateral calls --

7 THE COURT: Are you representing that if honchos like
8 Athan got in the loop, that the collateral call email address
9 necessarily would have those documents?

10 MR. PICKHARDT: We believe that to be the case. If
11 there was some sort of a moratorium put on the payment of
12 collaterals, it would have to be communicated to the collateral
13 call team and it would be done through that email box.

14 THE COURT: That would be the instruction to implement
15 it. They're also interested in whether there were memos that
16 reflect the decision-making process leading to a decision to
17 implement it.

18 MR. PICKHARDT: Which in fact, your Honor, is one of
19 the reasons why we believe this is all attempt that is being
20 conjured by Brookfield because we have already produced a very
21 large volume of documents from senior executives at AIG
22 financial products from the critical time period including the
23 senior people. That's why they have seen the email that they
24 have seen. If there had been some sort of broad crisis and
25 concern that, you know, agreeing to collateral calls was going

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1 to somehow put the company out of business, they would have
2 gotten those high-level documents already.

3 THE COURT: So Athan's emails have been searched for
4 relevant documents. Is he one of the key custodians?

5 MR. PICKHARDT: He is among the custodians who are
6 going to be in the second group that we are searching, so his
7 emails will be searched.

8 I'll also note that Mr. Athan's email that they are
9 making such a big deal about also was in the collateral call
10 box. So that also would be -- that specific email would be
11 picked up through a search of that box.

12 And we are intending to produce -- notwithstanding
13 that we think this has zero legal significance because this is
14 not a corporate moratorium if you have two lower level
15 employees who are saying, you know, let's enforce our legal
16 rights to dispute collateral calls for a period of time. So
17 setting that aside, we are agreeing to produce documents that
18 we come across in that email box that would constitute some
19 sort of an instruction to either not pay or to dispute, and,
20 again, there have been, you know, a bunch of senior executives
21 from AIG Financial Products whose documents have already been
22 searched, and if something had been in those boxes, they would
23 have been produced as responsive.

24 THE COURT: When are the documents for the second
25 tranche of 18 custodians going to be produced?

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1 MR. SHIELDS: Your Honor, we started reviewing those
2 document based on the search terms that we had used for the
3 first 19 custodians, which has yielded quite a large number of
4 documents, around half a million or so. Brookfield has, in our
5 last meet and confer about a week and a half ago, suggested
6 that they will -- let me first suggest that we're going to
7 start with those search terms but we are going to continue to
8 think about narrowing given the very large number of documents
9 that have been yielded from what we think are very large search
10 teams.

11 Brookfield has indicated they will provide us with
12 additional search terms in a joint effort to narrow that. So
13 until we get that proposal from them and discuss it, it's hard
14 to tell exactly when we will get through these documents
15 because we don't know how many we're going to be reviewing.
16 But, needless to say, half a million documents to start is
17 quite a large number of documents, and I'm sure it will expand
18 as we add custodians and as we review other types of documents
19 that we've agreed to produce.

20 MR. ASCHER: Your Honor, one approach then would be to
21 prioritize Mr. Athan's emails as well as the collateral call
22 email address and essentially separate those two custodians
23 from the other 17 custodians in the second phase of custodians
24 that Brookfield is suggesting.

25 MR. PICKHARDT: Your Honor, we are in the process of

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1 gathering the collateral call email box. We do not have it in
2 our possession yet. We also don't understand the need for a
3 priority in this instance by Brookfield's own position that
4 purportedly the documents that we had given them don't support
5 our case; undercut our case.

6 THE COURT: You sent them a Rule 11 letter. They want
7 to see whether you're right.

8 MR. PICKHARDT: Your Honor, they are not suggesting
9 that the documents that we have produced don't reflect what
10 they purport to reflect, which is agreements to post
11 collateral. They have not given any explanation as to another
12 document that they could imagine that would somehow suggest
13 that AIG had not in fact agreed to the collateral calls that
14 are reflected in those emails. That's the only narrow fact
15 that we are saying is that there was agreements to post
16 collateral across the entire span of the 16th. We don't think
17 that there is any other contextualizing that would somehow say
18 that that was not the case; and if it is the case, they can't
19 stand on these allegations. That's the narrow point here.

20 THE COURT: I am going to reach a somewhat Solomonic
21 solution here which is to direct that the Athan emails to or
22 from or on which he's copied be prioritized. If he gave that
23 instruction, presumably there was some discussion that led to
24 it, and if it's reflected in email traffic, that will show up
25 when his emails are searched.

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1 MR. PICKHARDT: Your Honor, we are happy to do that.
2 As Mr. Shields indicated, one of the things that we have been
3 waiting on, frankly, for six, eight months are search terms
4 that are agreed to by Brookfield. So if they can let us know
5 what search terms they would like for us to use with respect to
6 Mr. Athan's email box, which is the only reason those emails
7 haven't been searched already and they aren't queued up for
8 review, we'll be happy to do that on a priority basis.

9 MR. ASCHER: Your Honor, I'm not sure they need new
10 search terms on that, but we can certainly very quickly look
11 back at our search terms and give that to them immediately, but
12 just to try to put the baby back together again, your Honor --

13 THE COURT: Wait. Hang on. Within one week either
14 give them narrowed search terms or confirm that you want them
15 to run the search terms you previously gave them.

16 MR. ASCHER: Right. Thank you, your Honor.

17 Just to be clear, your Honor, since the original
18 document was found in the collateral call email address and so
19 much of the information that AIG has sent us has come from the
20 collateral call email address, and it is one email address,
21 it's hard for me to believe that it's got either non-responsive
22 information in it or any significant privileged information in
23 it given that it's just being sent out to multiple recipients.
24 We do think that it is very unburdensome and would also be very
25 helpful to also get the contents of that email box.

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1 THE COURT: I thought I heard Mr. Pickhardt say that
2 he doesn't yet have the collateral call email box.

3 MR. PICKHARDT: That's correct, your Honor. We are in
4 the process of collecting it, you know, for the entire time
5 period. One of the things we've indicated to Brookfield is
6 that we do expect that box to be extremely voluminous. We do
7 think it is going to contain both non-responsive and privileged
8 material. We are thinking that we will be able to produce
9 documents out of that email box efficiently by identifying
10 communications that were shared with third parties over which
11 there would be no claim of privilege, and therefore we can
12 produce documents out of that box most efficiently in that
13 process, as well as, you know, identifying any documents that
14 would, you know, support this theory of a purported, you know
15 moratorium.

16 So that is our intent, you know, to do, you know,
17 subject to us getting a better sense as to what the volume is,
18 and if there are burden concerns, we will raise them, but at
19 this point we are not in a position to do that.

20 THE COURT: I am going to adhere to my ruling.

21 MR. ASCHER: OK. Your Honor, I don't want to belabor
22 it --

23 THE COURT: But you will.

24 MR. ASCHER: -- but I will a little bit. I will try
25 to split the baby of my belaboring. They must have collected

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1 some portion of the collateral call email box because they've
2 already selectively produced 65 emails from it to us. So I am
3 not quite sure how it could be that they don't yet have that
4 email address.

5 Second of all, it is still a bit ambiguous, I think,
6 whether they are going to be producing all responsive emails
7 out of both Mr. Athan's emails and the collateral call email
8 box or whether they are somehow limiting it to formal
9 instructions to dispute or delayed payment or impose a
10 moratorium on payment. I thought I heard Mr. Pickhardt say he
11 wasn't abiding by that limitation, but I just wanted to make
12 that clear on the record, your Honor.

13 THE COURT: Let's take the second of those first.

14 MR. PICKHARDT: Yes, your Honor. I thought I already
15 had been clear on this point. We do disagree and reserve our
16 rights as to whether any of this has any legal significance
17 because we do think it has to be corporate action to have any
18 relevance under the standard set forth by Judge Gardephe.
19 However, we are intending to produce documents that would
20 reflect any instruction, directive from an employee at whatever
21 level to institute, you know, a policy or a plan to either
22 dispute or not post collateral.

23 THE COURT: Well, how about discussion about whether
24 or not that's a good idea?

25 MR. PICKHARDT: Yes, your Honor, we will -- anything,

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1 you know, related to, you know, a --

2 THE COURT: You're carving something out, and I'm not
3 sure what the piece that you're carving out is.

4 MR. PICKHARDT: The only thing I'm carving out, your
5 Honor, is that there may be internal discussions that may or
6 may not involve lawyers with respect to particular, you know,
7 collateral call payments. We are not intending to produce
8 that. However, you know, to the extent that there are
9 discussions --

10 THE COURT: Well, just let me stop you there. If they
11 are not privileged and they're responsive, they have to be
12 produced. If they are privileged, they have to be logged.

13 MR. PICKHARDT: Your Honor, we have objected to just
14 internal correspondence at AIG related to the day-to-day
15 routine posting of collateral as not being relevant.

16 THE COURT: We're talking about the three-day period,
17 right?

18 MR. PICKHARDT: No, your Honor. These are requests
19 that cover the entire time period from August of 2008 to March
20 of 2009. There is an immense --

21 MR. McLOUGHLIN: We are carving out these three days.

22 THE COURT: As to that, I think your burdensomeness
23 argument is valid.

24 MR. ASCHER: We want everything for September 15, 16
25 and 17 your Honor, absolutely. And for that I don't think it

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1 could be burdensome, and it is absolutely relevant to
2 reconstructing what was occurring at AIGFP. Mr. Pickhardt has
3 minimized it by saying as if there was some sort of crisis.
4 There was a crisis, your Honor.

5 THE COURT: Yes, I think for that three-day period
6 production should be inclusive.

7 MR. PICKHARDT: OK, your Honor. So if I understand
8 what we are adhering to here is that for that three-day time
9 period out of that email box, we would agree to produce
10 discussions with respect to either disputes on collateral calls
11 or whether to pay collateral calls, we certainly will produce
12 any --

13 THE COURT: It's not just out of the email box. If,
14 for example, Athan has emails that aren't in the collateral
15 call email box, those have to be produced, and if there were
16 emails from key decision makers which are not in that box,
17 similarly those have to be produced, not just as to formal
18 instructions or decisions but any discussion of whether or not
19 to honor collateral calls.

20 MR. PICKHARDT: OK, your Honor, we understand. We
21 have -- you know, to the extent we have already come across
22 documents of that nature in the senior executives' email boxes
23 that we've already reviewed, those have been produced, we will
24 do so for Mr. Athan as well, as well as for that three-day
25 period from the collateral call box.

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1 THE COURT: OK.

2 MR. ASCHER: I think we're comfortable, your Honor.

3 THE COURT: OK.

4 MR. ASCHER: I'd be more comfortable if they were
5 going to review all of Mr. Athan's emails for those three days,
6 which can't possibly be burdensome. We're talking about one
7 custodian who probably gets a few hundred emails a day.

8 THE COURT: I think I directed that, but precisely how
9 they go about it, as I said, I'm not going to micromanage, but
10 as a practical matter I think that may be what they have to do.

11 MR. ASCHER: Thank you, your Honor.

12 THE COURT: Let's move on to request 46.

13 MR. McLOUGHLIN: Yes, Judge. Good morning.

14 Request 46 is directed at documents concerning AIG's
15 failure to pay its obligations. The reason that we have that
16 request is because it goes to one of our core allegations in
17 the case: That AIG was unable to pay its debts and the
18 evidence of that is that or some of the evidence of that is
19 that on the 16th and at other days immediately prior to the
20 first bailout, AIG did in fact make -- did have missed
21 payments. It failed to pay certain counterparties.

22 Brookfield's allegations on that score are based in part of
23 AIG's own documents, documents that say things like "these
24 events are causing us to fail on many transactions" or another
25 document that says "a counterparty isn't paying us because

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1 we're failing to pay them on coupon payments." It's those
2 facts that we believe are probative and will help us prove our
3 claim that AIG triggered an event of default for being unable
4 to pay event of default.

5 So we gave a request to that effect, and the results
6 after three and a half months than and four meet and confers is
7 that AIG has informed us that they will seek out a person --
8 they have not interviewed him yet -- and they will talk to him
9 when his business commitments and schedule permits.

10 Judge, this is a type of information that --

11 THE COURT: Hang on just a second. I underlined that
12 last line of Mr. Pickhardt's letter, and I put next to it in
13 the margin an X. I don't care who this individual is, he needs
14 to get together with you folks soon.

15 MR. PICKHARDT: Yes, your Honor. We have committed
16 that we will have a proposal to Brookfield on this topic within
17 a couple weeks. So we are not intending to, you know, try to
18 string this out. As your Honor knows, we have been focused on
19 a lot of categories of documents that we have been asked to
20 prioritize to get to them. This has not been the subject of
21 recent meet and confers. I was a little surprised to see it in
22 the letter because we would have been happy to provide it. To
23 the extent --

24 THE COURT: But the long lead item I gather is
25 interviewing this person, and that needs to be accomplished

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1 quickly.

2 MR. PICKHARDT: Yes, your Honor. Again, we do expect
3 to be able to do that. Our hope is that we're going to be able
4 to do that within a week. And, again, we've indicated to
5 Brookfield that within a couple weeks we expect to have a
6 proposal to them on this. This is a complicated request
7 because they are asking for all documents related to any
8 failure to pay and, frankly --

9 THE COURT: And I've indicated to the extent that the
10 stationery store didn't get paid, I don't view that as
11 something -- I mean, it is responsive, but I don't view that as
12 what this effort should be about. And things like that need to
13 be carved out in some sort of way so as to reduce the burden.

14 MR. PICKHARDT: Yes, and we have spoken to -- I
15 apologize, your Honor.

16 THE COURT: That's OK. I am going to direct that
17 whatever individual you've referred to in the last sentence of
18 that letter be interviewed in the next ten days.

19 MR. PICKHARDT: Understood, your Honor. I also don't
20 mean by singling out one individual that this is the first
21 effort we have undertaken with respect to this particular
22 request. We have interviewed, you know, a number of people at
23 AIG and have kind of triangulated to this being the person that
24 we need to talk to. So we have had ongoing efforts, and we
25 expect that those efforts will result in a proposal shortly and

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1 we certainly understand your Honor's order and will meet with
2 him within the next ten days.

3 THE COURT: OK. Does that bring us to request 51?

4 MR. McLOUGHLIN: That does bring us to request 51,
5 your Honor. Request 51, as you saw, relates to the decision to
6 unwind AIGFP. That decision was a momentous decision for a
7 company like AIG. It is a major subsidiary with thousands of
8 employees with numerous portfolios, and it is not an
9 exaggeration to say that that subsidiary was at the heart of
10 AIG's demise and, frankly, at the heart of the broader
11 financial crises that led to the multiple bailouts.

12 Our allegation is that regardless of the label put on
13 it, that that unwinding of FP triggered an event of default.
14 To that end, we propounded a document request, and we've gotten
15 strangely little about the decision, and we've gotten sort of
16 curious proposals from AIG about what they plan to search for
17 the decision because the people they plan to search either
18 don't have documents -- we've already received the board
19 materials. That's the first universe. They don't discuss in
20 any depth the winding up of FP or turning off or shutting down
21 of FP.

22 The second universe they've proposed is the steering
23 committee to manage the wind up of FP. Those people are
24 involved in the progress of winding up AIGFP. To our
25 knowledge, those people are not involved in the decision to

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1 wind up AIGFP.

2 So we have a kind of a carve-out here that is drawing
3 our attention that is curious in light of our very specific
4 request for information about the decision to turn off or shut
5 down AIGFP. It may be there are privileged documents. We
6 haven't been told this, but it may be --

7 THE COURT: I was going to say, it may be that they
8 take the position that all of the treasure trove you're seeking
9 is privileged.

10 MR. McLOUGHLIN: They haven't taken that position
11 formally -- in anything written they've put towards us, your
12 Honor. So we are kind of at a loss to know what is out there,
13 and when they're proposing people and saying, well, we're going
14 to continue to work on it, we are going to ask the steering
15 committee or we are going to search the steering committee --

16 THE COURT: Mr. Pickhardt's letter says they are not
17 aware of any additional custodians who might have responsive
18 documents, so they don't know what else they ought to do. If
19 there is no privilege log yet as to this, you may have to await
20 the privilege log, but why don't you tell me what that --

21 MR. McLOUGHLIN: Sorry.

22 MR. SHIELDS: Finish your thought.

23 THE COURT: Somebody. Anybody.

24 MR. McLOUGHLIN: Well, Judge, they may say that there
25 are no responsive documents, but it's not clear that there may

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1 be responsive privileged documents that would lead us in the
2 direction where we could speak to, for example, Doug Poling,
3 former general counsel, Bill Shirley, current general counsel.
4 Those individuals, given, again, the enormity of this decision
5 -- again, this is not turning up a small subsidiary.

6 THE COURT: I understand that.

7 MR. McLOUGHLIN: So it is the shear absence of
8 documents about the decision to shut it down that has drawn our
9 attention and which we need to know more about.

10 MR. SHIELDS: Your Honor, to the best of our
11 knowledge, the decision to wind down FP was made by the board
12 of directors of AIG. We have produced the board minutes, the
13 board packages from the relevant time period, we produced
14 to/from searches from the email addresses of the board members,
15 we've also produced every document we've seen from the 19
16 custodians relating to wind down.

17 THE COURT: Do I remember correctly that the board
18 members did not have AIG --

19 MR. SHIELDS: Correct.

20 THE COURT: -- email addresses unless they happened to
21 be at AIG?

22 MR. SHIELDS: Correct, your Honor. But they
23 communicated with -- to the extent they were communicating with
24 AIG regarding board issues, they were doing so copying the
25 corporate secretary. So what we've done is done a to/from

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1 search from the corporate secretary's files in order to find
2 communications involving the board members of official board
3 business. So, to produce all of those documents, we intend to
4 for the second set of 18 custodians produce anything we see
5 regarding wind down. We are going to do so as well from the
6 files of the AIGFP steering committee which was in charge of
7 the wind down as well as any other members of that committee
8 who were not a part of the original set of custodians which
9 we've agreed to.

10 We really are at a loss as to what else they expect us
11 to do. We have not been told of any other place where we
12 should be looking for that.

13 THE COURT: What is the status of a privilege log as
14 to that portion of Brookfield's request?

15 MR. SHIELDS: We've done the privilege log for the
16 board materials already and given it to them with respect to --
17 have we done -- we're still in the process for the 19
18 custodians. We previously agreed to a date in July to finish
19 that up on a rolling basis, and we will do so.

20 MR. McLOUGHLIN: Well, Judge, Bill Shirley, who is the
21 current general counsel, is not listed on any list of
22 custodians to date. It would be helpful to know if we should
23 expect the majority of responsive documents are in his custody
24 and going to be logged as privileged before July.

25 MR. SHIELDS: Your Honor Bill Shirley is a lawyer at

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1 FP. Again, our understanding is that the decision to wind down
2 AIGFP, which, again, makes sense, was made by the AIG board,
3 not a lawyer at AIGFP.

4 THE COURT: Well, but they're seeking any documents
5 that relate to the decision. So I don't think they are
6 suggesting that some lawyer at a subsidiary implemented the
7 decision.

8 MR. SHIELDS: Well, your Honor, to the extent --

9 THE COURT: But if I hear counsel correctly, they're
10 saying they don't have any documents that show a series of
11 discussions leading to the decision, which they find odd and I
12 guess I find odd also.

13 MR. SHIELDS: Well, your Honor, it's possible, and I
14 wasn't there, that these discussions may have been oral, you
15 know, particularly given the timing of the decision which was
16 in September of 2008 period. Again, I don't know. All I know
17 is that we have looked in the exact places where one would
18 expect to have discussions regarding these issues, particularly
19 the board minutes and board packages as well as the emails of
20 the board members as well as the emails of the most senior
21 members of AIG where this decision would have been made, not at
22 FP. And the documents are what they are.

23 MR. McLOUGHLIN: Judge, if I could just be heard on
24 that briefly. Two quick points: First, respectfully,
25 Mr. Shields should know or Mr. Pickhardt should know by now

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1 what happened, how was the decision made. If it's not
2 reflected in any of these documents, perhaps, you know, the
3 notion is, Judge, perhaps it was oral, perhaps it was conducted
4 in a hurry. That should be pinned down by now that we are over
5 a year into this case in that AIGFP is a defendant, wind-up has
6 survived the motion to dismiss, wind-up, whatever name they
7 want to call it, has survived the motion to dismiss, we really
8 should be working on a better submission to the Court on what
9 is going on there, and I would add that, they referred to --

10 THE COURT: But if at the end of document production
11 there are no documents, I assume that there will be a 30(b)(6)
12 deposition saying who made the decision and how and what was
13 the process leading to it.

14 MR. McLOUGHLIN: Judge, it may come to pass that a
15 30(b)(6) is the only way to get this; however, we would point
16 out that Brookfield has been the party that has continually
17 proposed custodians so for AIG to say, here, these are the
18 folks that --

19 THE COURT: I don't hear counsel saying simply they
20 gave us a list of names, we looked at those names, and we came
21 up empty handed. I thought I heard you say that you've looked
22 in every place you believe would be a logical place and haven't
23 been able to find further documents.

24 MR. SHIELDS: We haven't been -- in our investigation,
25 we have not been directed to any other place to look for these

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1 documents. We continue to ask questions.

2 THE COURT: When you say "directed," I'm not sure
3 we've looked in all the places Brookfield asked us to look or
4 whether you're saying we've looked in all the places that we
5 think are logical.

6 MR. SHIELDS: It's the latter, your Honor. Again, we
7 continue to have discussions with our clients regarding any
8 other place we have not thought about where we should be
9 looking for this and any other type of relevant documents.

10 THE COURT: It may be that AIG gathered in a huddle
11 and said we're not going to exchange any correspondence about
12 this. It seems odd, but that may in fact be what occurred
13 here, so...

14 MR. McLOUGHLIN: We would like to know where they --
15 who's been doing the directing there. Has Doug Poling or Bill
16 Shirley be the ones giving these suggestions where to look?

17 THE COURT: We are putting the cart before the horse.
18 The horse is document production, and then there will be a
19 period for depositions and other forms of discovery. The only
20 thing I'm concerned about today is documents, and if there are
21 no documents, that pretty much is the end of the discussion.
22 Or if they're privileged and will be on this log.

23 MR. McLOUGHLIN: I hear you, your Honor. I guess to
24 maybe put a sharper point on it, we haven't been given an
25 explanation of why a committee charged with the winding up of

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1 AIGFP financial products would know anything about the decision
2 to wind up the subsidiary itself. Why were the people tasked
3 with that. So, again, we are kind of looking through a glass
4 darkly here and trying to discern what are the decisions, what
5 is the thinking behind the people that are being proposed
6 because the people that are being proposed to date simply don't
7 add up.

8 MR. SHIELDS: But, your Honor, the board, AIG board,
9 is the entity that made this decision. There are references to
10 the wind down in the board minutes that we've provided them.
11 There is a place where they should be looking. That is the
12 place we've been looking. Also, in addition to the --

13 THE COURT: Who made the presentation to the board
14 suggesting this proposal?

15 MR. SHIELDS: I don't know, your Honor. All I know is
16 that the decision itself was made by the board.

17 THE COURT: Isn't there an agenda that reflects who
18 was going to present this fairly significant proposal?

19 MR. SHIELDS: We've given them all the agendas that we
20 have for the board for that period of time.

21 MR. McLOUGHLIN: Judge, the answer is no.

22 THE COURT: Well, it sounds like it will be a topic
23 that you will want to have in a 30(b)(6) deposition fairly
24 early on when you get to the deposition stage, but at this
25 stage I'm just worried about documents.

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1 MR. McLOUGHLIN: We understand, your Honor.

2 I guess one aspect that we would like to put on the
3 table taking up your point about the privilege log is to put a
4 clear date on the calendar of when we can expect to get
5 privileged materials regarding this point. So we are not on
6 the last day of discovery -- that's when we start drafting the
7 30(b)(6) notice.

8 MR. SHIELDS: Your Honor, they already have the
9 privilege log for the board materials. And for the remainder
10 of the privilege log of the 19 custodians, it's impossible for
11 us to target just those discussions that may involve a
12 discussion of wind down and prioritize that. What we've been
13 doing, and which makes the most logical sense, is going date by
14 date and log entry by log entry and producing them in a
15 coherent order.

16 THE COURT: As I said, I'm not going to micromanage
17 the process and this is one of those aspects that I'm not going
18 to micromanage.

19 MR. McLOUGHLIN: I understand your position, Judge.
20 Thank you.

21 THE COURT: Request 43.

22 MR. BROWN: Yes, your Honor.

23 As you know, request 43 seeks documents concerning
24 governmental assistance to AIG. This is obviously a big part
25 of the story of this case. It's relevant not just to the

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1 trusteeship event of default but also to the balance sheet,
2 solvency and inability to pay debts in the event of default.

3 Request 43 is targeted at these latter two issues. In
4 the course of negotiating the bailout in terms of the bailouts,
5 individuals at AIG and at the federal government had to assess
6 AIG's financial condition, had to make a determination of AIG's
7 cash needs and decide what they were going to do. In doing
8 this they performed an analysis very similar to the solvency
9 analysis and the liquidity analyses that we are going to
10 performed with regard to AIG. So request 43 is targeted to get
11 materials that are going to help us perform these analyses.

12 In response to this request, AIG has agreed to produce
13 three categories of documents which are plainly inadequate to
14 satisfy our needs. First, they've agreed to produce agreements
15 and amendments to those agreements between AIG and the federal
16 government. These are obviously important documents, but to
17 our understanding these are all public documents. So AIG
18 hasn't really given us a lot by agreeing to produce those in
19 discovery.

20 Second, they've agreed to produce formal
21 communications under those agreements. Again, that's a great
22 start, but there are several important limitations to that.
23 First of all, this excludes all documents created and all
24 communications prior to the first bailout. By definition,
25 there was no agreement between AIG and the federal government

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1 at that point, so there can't be any formal communications
2 under agreement. And we believe this may be one of the most
3 fertile time periods for the sorts of analyses and
4 communications that we're looking for.

5 Second of all, this limitation excludes all
6 communications or documents exchanged just between AIG
7 personnel. While it's obviously important that we know
8 whatever AIG ultimately decided to tell the federal government,
9 we think a lot of the stuff that we're looking for is going to
10 happen in the back-and-forth between AIG employees deciding
11 what exactly their needs were and what they were going to tell
12 the government and we think we're entitled to those documents
13 as well.

14 Finally, we think likely a lot of this back-and-forth
15 and a lot of the heavy work done in regard to assessing AIG's
16 financial condition happened in the form of informal
17 communications and not the handful of formal communications
18 that likely were exchanged between AIG and the federal
19 government. So that's on the formal communications.

20 The third category of documents that AIG has agreed to
21 produce in response to this request are things from the office
22 of the AIG corporate secretary. Again, we think these are
23 important documents and we're glad to get them, but we think
24 that the office of the corporate secretary is most likely going
25 to be involved in governance issues, likely played some role in

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1 the exchange of formal communications between AIG and the
2 federal government, but we have no reason to believe, and we
3 don't think it's likely, that the office of the AIG corporate
4 secretary was involved in the sort of detailed financial
5 analysis to assess AIG's financial condition, to assess their
6 cash needs, and to figure out what exactly they needed from the
7 federal government. We think it's most likely that this
8 happened in the AIG treasury department or some similar group
9 that had its hands dirty in figuring out sort of AIG's
10 financial condition. So, for that reason, we think that what
11 they've agreed to do on this request is wholly inadequate.

12 Finally, I just want to observe that in the course of
13 AIG's productions to date we've received already nothing on the
14 second and third bailouts. I think this really illustrates the
15 point that Brookfield isn't in a position to identify
16 custodians likely to have documents responsive to this request.
17 It's AIG's responsibility to identify those custodians and thus
18 far have failed to do so. So we are asking your Honor to order
19 them to undertake a more serious search identifying custodians
20 likely to have documents responsive to this request and to
21 produce those documents.

22 THE COURT: Mr. Shields.

23 MR. SHIELDS: Your Honor, as a general matter, we have
24 started with the original 19 custodians which will extend into
25 the second 18 have been producing documents relative to AIG's

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1 financial condition as well as the assessment and the receipt
2 of federal funding from the Fed and from other governmental
3 entities. So the types of documents that they are seeking are
4 and should continue to be included within this category of
5 documents.

6 In addition, we have agreed to give the exact
7 documents that Mr. Brown has described, including formal
8 communications between AIG and the Fed under the credit
9 facility which will include waiver -- requests for waivers on
10 the terms of the facility from AIG to FP, which is significant
11 because to the extent that AIG was seeking relief from any
12 restrictions that the Fed had put on AIG would have been done
13 through this process. A lot of these documents have been
14 produced from the files of the 19 custodians and will continue
15 to be produced as discovery continues.

16 THE COURT: Well, one of the things that
17 Mr. Pickhardt's letter says is that the request is ambiguous
18 and over broad. My view is, first of all, I don't view it as
19 vague. I think it's fairly clear, and I suppose at the
20 perimeter it might be over broad, but that's something that
21 ought to be the subject of discussion then. By saying it might
22 be, I'm not saying it necessarily is. I think it's asking for
23 a fairly defined core group of documents, and if those don't
24 exist or go beyond formal requests, documents at the office of
25 the corporate secretary and the like, it seems to me that they

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1 are still documents that need to be produced.

2 MR. SHIELDS: One of the categories of documents that
3 we've agreed to give them is documents from AIG strategic
4 planning group. One of the types of documents we are told are
5 in there are documents assessing the impact of federal funding
6 from -- the impact on AIG of federal funding which seems to be
7 at the core of what they are looking for.

8 I mean, to the extent, your Honor, that they are
9 looking for every communication between AIG and the Fed, that
10 is clearly an over broad request given the amount of
11 interaction that those two entities had over this extended
12 period of time.

13 We think that the areas where we have targeted our
14 searches including the custodians that they have identi -- that
15 we are reviewing, as well as these additional targeted areas,
16 should give them everything they need to understand the
17 relationship between AIG and FP -- excuse me, AIG and the Fed,
18 as well as given all of the financial data we've agreed to give
19 them, that should give them everything they need to assess
20 AIG's solvency and other financial issues.

21 THE COURT: I think it's clear if there were
22 communications back and forth that relate to minutiae, that's
23 not responsive to the request. However, if beyond all the
24 categories that you've just described or are described in the
25 letter, if there's some guy named Murray whose job it was to

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1 assess, for example, the valuation of the government's
2 financial assistance, and he doesn't fall within any of the
3 bailiwicks that you've described, my view is that Murray's
4 files would have to be produced providing that a good faith
5 inquiry on your part has disclosed the fact that there is a guy
6 named Murray.

7 I don't think you have to look at every employee of
8 AIG or AIGFP to determine whether there is such an individual,
9 but an inquiry into the process reveals that he exists, even if
10 his files don't fall within these three categories, they would
11 have to be produced.

12 MR. PICKHARDT: Your Honor, we actually, you know,
13 have been endeavoring to identify reports of the nature that
14 your Honor just suggested. For example, when we talked to the
15 treasury department, we asked them about needs under the Fed
16 facility and what sorts of reports or communications there
17 might be around that, and they indicated that there are some
18 cash flow reports that were identifying what needs there would
19 be under the federal facility. We have cited those for
20 production and collection.

21 So we certainly are seeking to provide to Brookfield
22 financial reports that will provide them with a view of the
23 company's financial condition and how that financial condition
24 relates to, you know, the Fed facility.

25 As Mr. Shields has indicated, the reason why we're a

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1 little bit lost with providing a full response to this is that
2 they've asked for all documents related to the reasons for, you
3 know, the government bailout. Obviously, we could turn the
4 buildings upside down and shake out every piece of paper if we
5 were going to technically respond to all of that. But we
6 certainly have been seeking, to the extent that we can
7 identify, financial reports that will be responsive to this.
8 We are seeking to get those, and we are getting the things from
9 the corporate secretary's office which we think is really the
10 focus for the main communications.

11 THE COURT: In my remarks, I was, I suppose, focusing
12 more on email traffic, and to the extent that a good faith
13 inquiry discloses that there are other custodians beyond
14 corporate secretary and the like whose files ought to be
15 examined, all I'm saying is I view that as being incumbent upon
16 AIG.

17 MR. PICKHARDT: Well, your Honor, I mean, we are
18 certainly happy to identify for Brookfield as our investigation
19 continues on this if there is a point person who is dealing
20 with the Fed on any particular issues with respect to the
21 federal bailout.

22 To the extent we are asking for you, you know, any
23 custodian's documents that relate in some way, you know, to the
24 bailout, I just don't even know where we would start on that.

25 THE COURT: I would imagine as the bailout was

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1 occurring, there were people at astonishingly low levels of the
2 company who were emailing back and forth about the financial
3 consequences of the bailout and the reasons therefor perhaps
4 for the restructuring that was covered in the newspapers. I'm
5 not expecting you to seek out those sorts of materials, but
6 among the decision makers or people who reported directly to
7 decision makers with respect to these three issues described in
8 the request, I am expecting you to make reasonable inquiries
9 such that if there were people beyond those who you've
10 indicated you're reviewing whose email traffic in particular
11 needs to be looked at, you need to do that.

12 MR. PICKHARDT: Your Honor, we do believe to the
13 extent we are talking about decision makers, we have, you know,
14 40 plus custodians who are the decision makers related to this
15 process, we do think that would be captured by those
16 particular individuals. We will, in light of your Honor's, you
17 know, comments go back and consider whether there are
18 additional custodian who we have, you know, learned about in
19 this process so far or who we can identify through further
20 inquiry and can, you know, discuss that with Brookfield and
21 whether we think that would be or burden would dictate that we
22 think we should not have to search those.

23 THE COURT: And just in general, I think with respect
24 to each of these requests, that analysis is true. If they've
25 identified 40 or so custodians and they've missed a key person

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1 who you're aware of, I think it's incumbent upon you to produce
2 the documents from that additional key person.

3 MR. PICKHARDT: And we have been undertaking those
4 efforts. But your Honor will recall that when Brookfield
5 requested a very expedited schedule, which your Honor didn't
6 give them exactly what they asked for but it's not that far off
7 really, and our feet are to the fire to get this done, one of
8 the things they represented is that we are not propounding
9 requests that are going to require you to go find all documents
10 and to turn upside down and do lots of full email box searches,
11 but what we are rather looking for are the key reports. And
12 that is -- you know, we are trying to satisfy what they are
13 looking for, but we do think, your Honor, it would be, you
14 know, inconsistent with what Brookfield has represented this
15 phase of discovery is supposed to be about and ultimately
16 inconsistent with the extremely tight time frames that we are
17 under for us to do sort of full searches of additional
18 discovery --

19 THE COURT: I don't disagree with what you just said,
20 but, you know, there are a number of different ways to find
21 responsive documents, one of which is electronic searches,
22 another of which is turning to the key decision makers and
23 saying is there anybody else who was in the loop, which I
24 assume you are doing as part of this process. If the answer
25 is, yes, there's a guy named Murray who worked on the third

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1 floor who actually was responsible for compiling all of this
2 even though nobody had heard of Murray before, I deem Murray's
3 files as responsive.

4 MR. PICKHARDT: Yes, your Honor, we absolutely have
5 been doing that. I can give you an example. A couple weeks
6 ago we met with AIG's treasurer, Mr. Gender. We asked
7 Mr. Gender to bring with him to that meeting a group of people
8 who could help us with respect to a number of requests. He
9 brought those individuals, and we sat there, we talked to each
10 of them and said what would you have, you know, that might be
11 helpful responsive to these requests?

12 So we are not limiting ourselves to just asking the
13 most senior folks. We are going down a level, and, for
14 example, growing out of that meeting, we learned about these
15 reports that treasury prepares that concern liquidity needs
16 under the Fed facility, and we are in the process of gathering
17 those.

18 So we think we have been undertaking a reasonable
19 process along the lines of what your Honor is identifying and
20 will be consistent with the very tight time constraints that we
21 are under seeking to get Brookfield sufficient documents for
22 them to have the information that they are looking for.

23 MR. BROWN: I would just like to make two quick
24 points, your Honor. First of all, part of what motivates this
25 request is the fact that Brookfield believes there's a very

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1 good chance that AIG was also balance sheet insolvent prior to
2 the second government bailout. That's why the second bailout
3 was necessary.

4 We think we're entitled to get the analyses and the
5 work that went in to determining why the second bailout was
6 necessary and how to structure it and how much AIG needed.

7 We don't think that sort of detailed analyses is going
8 to appear in the formal correspondence that is going back and
9 forth between the parties. That is why this request digs
10 deeper. I think I've explained why the formal
11 communications --

12 THE COURT: So where is it going to appear on your
13 hypothesis?

14 MR. BROWN: We think, as I said, it's likely that
15 there were communications between employees at AIG and
16 individuals at the government about the cash needs and that
17 they were exchanging analyses. We think it is likely that was
18 done informally; it was done in day-to-day email traffic
19 between these individuals. For that reason, we think it's very
20 important that AIG search everything that went across from AIG
21 to the federal government. Also, we think that a significant
22 amount of this work was done between individuals at AIG when
23 they were deciding exactly how much they needed to ask the
24 government for.

25 THE COURT: Well, with an \$85 billion bailout, I would

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1 assume that there was a great deal of communication over time
2 only monitoring the use of the funds and the like.

3 MR. ASCHER: Your Honor, it may be helpful just to put
4 on the table some of the specific things that happened in the
5 second bailout to explain this request. The first bailout was
6 \$85 billion. The second phase of the bailout had several
7 different components that did a great deal to shore up AIG's
8 balance sheet. So, for example, some of the debt -- some of
9 the loans that the government had extended to AIG were
10 converted from debt into equity, so that helped AIG's balance
11 sheet, and that was, I think, \$30 billion, maybe more.

12 In addition, a number of liabilities were taken off of
13 AIG's balance sheet and put into the Maiden Lane II and Maiden
14 Lane III vehicles, and, in addition, more credit was made
15 available to AIG.

16 So, when you look at all of those things together, it
17 cries out for -- it suggests very strongly that AIG believed it
18 was balance sheet insolvent and needed to do a series of things
19 to restructure its situation with the federal government.

20 So while we appreciate charts that will show that AIG
21 needed to borrow more money, it's more than just borrowing more
22 money. So we are really looking for not only communications
23 with the government but internally within AIG. There may have
24 been someone within the accounting department, the finance
25 department who was looking at AIG's balance sheet in between

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1 the corridor and saying, look at our balance sheet, we need to
2 restructure this.

3 MR. SHIELDS: Your Honor, to the extent that these
4 documents exists, they are going to be in the files of the
5 custodians we are searching. What Mr. Ascher is suggesting is
6 not some minor incident in the company's day-to-day activities
7 but an incredibly major incident that will necessarily be
8 covered by emails of the treasurer, the CEO and other senior
9 members of the company, and as well should be reflected in all
10 the financial documents that we've given them and will continue
11 to give them.

12 THE COURT: I guess what I'm saying is I don't see a
13 need to search every custodian at the company, but in the
14 logical places where documents of this sort would reside, you
15 do need to undertake a search. You know, again, it may deal
16 with prioritization and the like but it certainly seems logical
17 to me, as it does to Brookfield, that there ought to be some
18 documents that reflect why there was further financial
19 involvement of the government and why it took the various forms
20 that were just described.

21 MR. BROWN: Your Honor, I would just like to make a
22 point. When Mr. Shields says that he believes these documents
23 will be among the custodians they're already searching, and
24 Mr. Pickhardt says they're searching 40 custodians, every one
25 of those custodians is someone Brookfield proposed and that

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1 AIG's proposal in response to this request --

2 THE COURT: And I proposed a guy named Murray, and
3 I've now said several times that if Murray has documents that
4 are responsive to this, his files need to be searched, and that
5 has to be based upon a good faith effort to discover whether
6 there is somebody named Murray who has responsive documents.
7 And if past August 31 you make a convincing case through the
8 sorts of depositions that presumably you will be taking, that
9 (A) there is a guy named Murray, (B) his files were never
10 searched, and (C) he has important documents on the AIG side,
11 there is going to be hell to pay. So, I certainly think
12 Mr. Pickhardt and Mr. Shields understand that.

13 It's fine for you to look in from the outside or for
14 me to hypothesize about what might have occurred, but this was
15 obviously an unusual time period in the history of this
16 company, and it may be not specific to this request, but it may
17 be that a lot of discussions were oral by design and that there
18 is very little documentation. As to this request, certainly
19 because it requires interfacing with various government
20 agencies, I would assume that there are documents. As I said,
21 if they're not among the 40 custodians but at this high level
22 of decision making these documents exist, I expect they will be
23 produced.

24 MR. PICKHARDT: Yes, your Honor.

25 THE COURT: I don't know what else I can say on this

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1 issue.

2 MR. PICKHARDT: We certainly understand our
3 obligations, your Honor. And Mr. Brown's statement that, you
4 know, we are limiting ourselves to custodians that have been
5 identified by Brookfield is just wrong.

6 As we've indicated specifically in response to this,
7 we are going to a number of members of the office of the
8 corporate secretary. They were never identified by Brookfield.
9 We are going through additional custodians we are searching
10 that were not identified by Brookfield. So that is just not an
11 accurate statement, and we do understand our obligations, your
12 Honor, and we will continue to work to comply with those in
13 response to this request as we did with others.

14 THE COURT: Requests 36 and 37, which I guess relates
15 to 200 or so transactions principally.

16 MR. ASCHER: Yes, your Honor. You will recall at our
17 last telephonic conference, we discussed account fact that the
18 balance sheet solvency sheet analysis we are conducting will
19 not go through all 150,000 transactions that AIGFP had on the
20 books in September 2008. There really is a reasonably limited
21 universe of transactions that we think is going to be the most
22 important for valuation purposes. These are the transactions
23 in which AIGFP lost the most amount of money, on which it had
24 multi-billion dollar collateral call disputes with its
25 counterparties indicating essentially that the rest of Wall

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1 Street was valuing these positions very, very differently from
2 AIG, which is what gives us the basis to believe that they were
3 overvalued on AIGFP's books. And we have been able to focus in
4 on what we believe will be no more than about 200 transactions.

5 In order for our experts to do the valuation work that
6 they would do as part of a routine balance sheet solvency
7 analysis, there are certain types of transaction documents that
8 they need. They need prospectuses, they need confirmations.
9 They will also need trustee reports and documents like that
10 showing how these deals performed.

11 AIG's only objection here is burden. I don't see a
12 relevance objection. And the basis for their burdensomeness
13 objection is, well, we at AIG didn't do a very good job of
14 maintaining these in a centralized location. We left it to
15 individual traders to maintain their own records, and,
16 therefore, it would be too burdensome for us to go back to
17 those traders.

18 Yet, AIG has given us absolutely no information to
19 substantiate the nature and scope of that burden. We don't
20 know how many different traders there are. We don't know how
21 many different in-house lawyers were responsible for
22 maintaining the legal documents associated with these
23 transactions, and, frankly, to us it doesn't sound like 200
24 transactions gathering six or seven different types of
25 documents is all that burdensome. It might take some people a

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1 few days or a couple weeks, but in the context of the magnitude
2 of this case, it sounds like a very reasonable request.

3 MR. SHIELDS: Your Honor, although, we don't take the
4 position that these requests are wholly irrelevant, they are
5 certainly at the edges of the irrelevant. None of the
6 documents that they are seeking -- prospectuses, term sheets,
7 confirmations -- in and of themselves relate to the value of
8 these deals much less the value of these deals during the
9 relevant time period.

10 So, although if these documents were particularly easy
11 to get, we would pick them up and hand them to Brookfield,
12 there are some significant burdens here, and given the limited
13 relevance of them, these burdens become -- suggest that this is
14 not an area where they should be pushing us on.

15 THE COURT: Put yourself in my shoes where there is
16 your position and then there is Brookfield's position.

17 Brookfield indicates that its experts believe that these are
18 the categories of documents it needs to do the sort of report
19 that Brookfield is commissioning as to whether or not AIG or
20 AIGFP were solvent. How do I second-guess that?

21 MR. SHIELDS: One thing you may ask them is an
22 explanation for why these documents are so pertinent. Again,
23 we are talking about things like prospectuses and term sheets
24 that predate the relevant time period, in some cases by as much
25 as 10 or 15 years. So it is not clear, given all of the

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1 financial data with respect to these deals and to the company
2 in general that are going to be giving them, that this the key
3 magic document -- these are the key magic documents they need
4 in order to engage in their analysis.

5 And, again, the burdens here are quite significant.
6 AIGFP did not keep the broad categories of the documents which
7 they are seeking in any centralized type of database. We are
8 going to be searching -- rummaging in many cases through the
9 paper files of a number of different people at FP, many of whom
10 are no longer there, in order to dig out these documents.

11 To the extent that a portion of these documents are
12 sitting in something called an electric file cabinet, those
13 documents are very much so as described in the deposition that
14 Mr. Ascher took of FP's CFO, Mr. Balfan, are not organized in a
15 way that's are very easy to get on an across-the-board basis.

16 Moreover, there are a number of privileged and
17 irrelevant documents or non-responsive documents intermingled
18 among the documents which they seek or which are in that
19 electronic file cabinet. To give you sort of a sense of it,
20 for a particular deal, there will be one big PDF that could be
21 as many as 3-, 400 pages of the documents related to that deal
22 that are in that particular system.

23 THE COURT: Generated at what point?

24 MR. SHIELDS: At different points. So it's an odd
25 setup. So rather than -- let's say you have your original deal

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1 documents, let's say they're 50 pages or 80 pages, what have
2 you, and over time they add things to it.

3 THE COURT: Suppose somebody adds another 20 pages?

4 MR. SHIELDS: It actually adds it into the one PDF.

5 THE COURT: That's what I was trying to get at.

6 MR. SHIELDS: It's not separate PDFs. They're not
7 easily broken down. What we would have to do for each of these
8 deals -- again, this is just for those particular documents --
9 take that PDF for that one deal and then go deal by deal by
10 deal by deal, break it down, unitize it, then review it to take
11 out the privileged communications and non-relevant documents,
12 and then begin to produce only a subset of the documents of
13 which they are seeking, at which point we have to go spread
14 around the rest of FP and rummage through files of people no
15 longer at the company and try to figure out where the rest of
16 this stuff is.

17 Given that the documents which they seek are at the
18 far edges of the documents they could possibly need to figure
19 out whether a company of the size of AIG and AIGFP were
20 solvent, that is quite a burden, particularly given the
21 discovery burdens that AIG is taking on in general in this
22 case.

23 MR. ASCHER: Your Honor, I must confess, I don't
24 understand AIG's relevance argument here. These are the
25 transactions that were most responsible for \$180 billion

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1 governmental bailout. Not the only category of transactions --

2 THE COURT: What Mr. Shields said is that some of
3 these documents are ten or 15 old.

4 MR. ASCHER: Yes, your Honor, and my understanding
5 from speaking with our experts, and it's now quite reasonable
6 to me, is you that can't value an asset without understanding
7 the terms of the transaction, and it's as simple as that in
8 terms of getting the prospectuses and the confirmations.

9 The other categories of documents that they are asking
10 for, things like trustee reports. A trustee report is a
11 quarterly or monthly report that would show how the asset
12 performed in the most recent period and the current status of
13 the asset. And while we may not need trustee reports from the
14 period 1995 to 2008, if it's a transaction that started in
15 1995, we certainly do need it for the recent period leading up
16 to the valuation.

17 THE COURT: Well, as to this I, think the two sides
18 should confer. Trustee reports, for example, the concessions
19 you've just made may narrow the effort, and there may be other
20 things like that that can be explored; but what I may do going
21 forward is require a submission from your expert that explains
22 to me the same way as he or she just explained or it was
23 explained to you why various documents are necessary for this
24 analysis, give AIG an opportunity to weigh in on the same
25 issues, and if the representation is that this is highly

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1 burdensome, I may end up requiring the parties to kick in for a
2 court-appointed expert who I consult so I can decide who is
3 right or the extent to which you are right.

4 MR. ASCHER: Your Honor, the other aspect on the
5 burden -- I think we've raised one issue, and I would like to
6 raise another one now. We believe that AIG has collected a lot
7 of these materials in the past. That is something that I
8 gather hasn't been investigated till now, so I don't know how
9 far we can take that today.

10 THE COURT: Certainly if that sort of collection has
11 been produced previously, that would undercut the argument, but
12 Mr. Pickhardt's letter says, at least as of April 18, they're
13 not aware of such a trove.

14 MR. SHIELDS: No, your Honor, we're certainly not.
15 This is first time there is any suggestion, either from our
16 side or theirs, that there may have been some sort of
17 collection of these particular kinds of documents at all, and
18 it certainly is our understanding that there has never been a
19 collection or there has not been a collection of these types of
20 documents for litigation purposes or production of governmental
21 entities as part of any investigation.

22 We will look into it, although I would note that two
23 of the three entities for which Brookfield suggests these
24 documents may have been given are law firms. To the extent
25 there was a collection -- I don't know that there has been --

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1 but to the extent there was a collection at the direction of
2 counsel of a subset of these types of documents, the
3 compilation of those documents would be covered by attorney
4 work product, and we have to find some way of dealing with that
5 concern.

6 MR. ASCHER: Your Honor, it's our understanding --

7 THE COURT: Wait. But I'm not sure -- I'm familiar
8 with cases like Sport v. Steel and some of the others, but if
9 the underlying documents are conveniently located at Weil or
10 Cadwallader in unannotated form and they can be gotten back,
11 that sort of undercuts your burdensomeness argument.

12 I don't know that Brookfield cares where they come
13 from or having the source identified. They could be produced
14 without an indication that they came from Cadwallader or Weil,
15 an accounting firm, and just be produced directly from AIG.

16 MR. SHIELDS: Sure.

17 MR. ASCHER: Your Honor, I'm sorry, I also seriously
18 doubt that those documents were collected in contemplation of
19 litigation. From the documents that we've seen, we believe
20 that Weil Gotshal and Cadwallader were retaining -- excuse me
21 -- were retained in order to analyze AIGFP's collateral
22 obligations and certain other financial terms of the very same
23 portfolio that our experts are purporting to analyze here.

24 THE COURT: But if it is in the same time period,
25 wouldn't it have been -- I think the ship was potentially

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1 sinking and, therefore, it was not unreasonable to think
2 litigation was in the offing?

3 MR. ASCHER: I think they were looking into what their
4 financial obligations were and they were trying to get a
5 handle.

6 One of the very important parts of this story, your
7 Honor, is that AIGFP completely lost track of the fact that it
8 had an obligation to post collateral to its counterparties. So
9 in late 2007 for the first time, AIG management realizes that
10 its subsidiary AIGFP has obligations under this enormous
11 portfolio to produce -- excuse me -- to post collateral if
12 market prices moved against AIGFP, and suddenly AIG and its
13 accountants auditors started to focus very clearly on this
14 liquidity request --

15 THE COURT: I assume Weil was brought in as bankruptcy
16 counsel.

17 MR. ASCHER: I think they were doing a lot of
18 different things, your Honor. They were involved before a
19 bankruptcy --

20 THE COURT: One of the things they were doing, since
21 bankruptcy by definition involves litigation, it's hard to see
22 how it wouldn't be in contemplation of litigation.

23 MR. SHIELDS: Your Honor, I think we may be -- and
24 this is probably my fault -- we may be putting the cart before
25 the horse. We haven't finished our investigation yet. We

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1 don't know that anything has been collected for litigation
2 purpose or not. So maybe the best thing for us to do is to
3 figure that out and determine if there is a problem.

4 THE COURT: I think you should make those
5 determinations. The two sides should confer in an effort to
6 narrow the request. But I certainly don't have enough
7 experience in this area to know what the right answer is.
8 Perhaps your expert can persuade me, perhaps an expert for AIG
9 can convince me that your expert is wrong, but probably it's
10 going to require me gaining more information than I have today
11 in order to make any decisions about this.

12 MR. SHIELDS: Although, your Honor, I think you should
13 keep in mind that these deals are valued on a regular basis.

14 THE COURT: But their theory is that your valuations
15 are wrong, and that certainly an issue they are entitled to
16 explore.

17
18 MR. ASCHER: The only point I was making, your Honor,
19 is if we do end up making a submission, we think it should
20 include quite a bit more information about burden as well as
21 relevance.

22 THE COURT: Sure. That brings us to the time period
23 for the requests which is something you are just drawing to my
24 attention but not seeking relief on today.

25 MR. BROWN: That's right, your Honor. So, as you can

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1 see from the pre-conference correspondence, the parties
2 disagree as to the appropriate time period that should be
3 applied to Brookfield's document requests. I think the parties
4 agree that that time period may differ from request to request,
5 but as a general matter, Brookfield believes its entitled to
6 documents, it's asked for documents from April of 2008 to June
7 of 2009.

8 AIG refuses to produce documents from beyond -- again,
9 with a few exceptions -- from beyond the time frame agreed upon
10 for the first phase of document discovery.

11 So even though we have agreed to deal with this issue
12 on a request-by-request basis, we wanted to flag it for your
13 Honor because of the issue's importance to Brookfield and
14 because we do anticipate coming to you promptly should the
15 parties be unable to agree for any particular request. So that
16 said, there are a couple of points as to the time frame that we
17 wanted to raise for you.

18 THE COURT: OK.

19 MR. BROWN: The first of which is that there is
20 absolutely no reason why Brookfield should be limited to the
21 time frame that was applied to the first phase of document
22 discovery.

23 The first phase of document discovery was limited, and
24 it was understood that should Brookfield's claims survive AIG's
25 motion to dismiss, that additional discovery would be

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1 appropriate. Brookfield did not agree to phasing discovery in
2 this way, with the understanding that it would be limited to
3 the requests, to the custodians or to the time frame that it
4 agreed on for the first phase of document discovery. There is
5 no reason why going forward subsequent discovery should be
6 limited to the discovery that took place during this first
7 limited phase.

8 So, second, as to the time frame itself, going back to
9 April of 2008 is very important for the balance sheet solvency
10 analysis. Our experts tell us when you are performing a
11 solvency analysis for a mid quarter date, the customary method
12 is to take the audited financial statements from the two
13 quarters that bookend that date and roll forward and roll back
14 from those audited financial statements based on your
15 understanding of what happened during that quarter.

16 So AIG's right that we allege that AIG was most likely
17 balance sheet insolvent during a period beginning in mid
18 September of 2008. The starting point for that analysis would
19 be a rolling forward from the second quarter of 2008 audited
20 financial statements. But, as you've just pointed out, one of
21 the major premises of this litigation is that AIG's financial
22 statements are not reliable, and for that reason we are
23 entitled to have access to documents and information that is
24 going to allow us to get behind the numbers that are reported
25 in the audited financial statements. For that reason, we want

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1 to roll forward from the second quarter of 2008 audited
2 financial statements, we need to know what happened during the
3 second quarter of 2008. So we think it is very reasonable to
4 ask for documents and for discovery beginning in April of 2008.

5 As to the back end of our time period, we have asked
6 for production of documents through June 30 of 2009. There are
7 two reasons for this. First of all, it's important to note
8 that throughout the entire financial crisis, AIG's stock hit
9 its lowest point in March of 2009, and credit spreads on AIG
10 debt were at their widest point in May of 2009. We think that
11 we're certainly entitled to discovery from that time period
12 when the markets believed that AIG was at its weakest and was
13 most likely to suffer the sort of financial distress that we've
14 alleged in our complaint.

15 Second, it's important to keep in mind that the third
16 and final government bailout occurred in March of 2009. We
17 think it's very likely that in the weeks and months after that
18 bailout there will be correspondence in retrospective analyses
19 that are going to show us and give us more information as to
20 what happened in March and what made that third bailout
21 necessary. We think it's completely reasonable to ask for
22 discovery that's going just a couple months beyond the final
23 date in which the government thought that it needed to step in
24 and provide AIG assistance.

25 I would just point out that in the first phase of

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1 discovery and in the documents we've received so far, some of
2 the most important documents as to what happened in September
3 of 2008 were created in late October and beyond. So there is
4 no reason to believe that stopping discovery at the point of
5 the third government bailout is a reasonable thing to do.

6 MR. PICKHARDT: Your Honor, as Mr. Brown, I think,
7 acknowledges, the complaint, if you look at the actual factual
8 allegations in the complaint, all of those relate to the period
9 from August of 2008 through March of 2009. We do think that
10 was a reasonable general sort of default time period for us to
11 use for document request during the first phase. We think that
12 that applies equally to the amended complaint which continues
13 to allege facts in that time period.

14 We don't really disagree that there are specific
15 requests for which we should go beyond that time period, and in
16 fact we don't even disagree with Mr. Brown's suggestion that
17 there should be some bookending that happens with respect to
18 financial statements.

19 So if that is the time period we're focused on, then
20 you have financial statements that were issued at the end of
21 June, at the end of the second quarter of 2008, we are agreeing
22 and in fact already have produced a lot of documents related to
23 the financial statements from that period. You go up through
24 March, there's financial statements that are issued at the end
25 of March, end of the first quarter of 2009. That provides book

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1 ending on that end.

2 So, I think we have already agreed that there should
3 be, you know, some bookending with respect to documents related
4 to the financial statement process, so you can see where the
5 company was before and you can see where the company was after
6 the, you know, allegations that are being asserted.

7 Brookfield is not making any specific application to
8 the Court with respect to any particular request. I would just
9 note that we have not been, you know, insisting that we would
10 not go beyond the August to March time period in total and our
11 looking at it on a request-by-request basis and would suggest
12 the Court take this up at a later time if there are specific
13 issues on that.

14 MR. BROWN: We agree with that. I am not going to
15 take issue with anything Mr. Pickhardt said. I just want to
16 correct myself. I said that the quarterly financial statements
17 are audited, and of course only annual financial statements are
18 audited. I just wanted to correct the record, but I think you
19 understand where the parties are on this issue.

20 THE COURT: I take it we don't have any further
21 conferences scheduled, is that right?

22 MR. PICKHARDT: That's correct, your Honor.

23 THE COURT: When ought we to schedule the next one?

24 MR. ASCHER: We have been on a monthly schedule, and
25 Brookfield believes that that's productive and helpful.

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1 (Pause)

2 THE COURT: May 19 at 2:00, a Thursday.

3 MR. ASCHER: That's fine for Brookfield, your Honor.

4 MR. PICKHARDT: I believe that will work, your Honor.

5 THE COURT: OK.

6 MR. ZIEGLER: 2:30 would be better.

7 THE COURT: 2:30 is fine.

8 MR. PICKHARDT: May 19 at 2:30, your Honor?

9 THE COURT: Yes, it will be in courtroom 20A. For the
10 record, I don't like this courtroom because of the mounting of
11 lighting fixtures.

12 MR. ASCHER: Thanks for enduring it so patiently, your
13 Honor.

14 MR. PICKHARDT: We also would like to congratulate
15 Mr. Ziegler in having sat silently. I think it was quite an
16 accomplishment.

17 THE COURT: I would too. Thank you all.

18 (Adjourned)

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